STATE OF MINNESOTA
IN COURT OF APPEALS
A22-1243

State of Minnesota,
Appellant,

vs.

Dustin Joseph Paulson,
Respondent.

Filed January 23, 2023
Reversed and remanded
Connolly, Judge

Ramsey County District Court
File No. 62-CR-21-5647

Keith Ellison, Attorney General, St. Paul, Minnesota; and

John Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for appellant)

Joseph A. Gangi, Farrish Johnson Law Office, Chtd., Mankato, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Segal, Chief Judge; and Connolly, Judge.

SYLLABUS

1. A group of persons collectively participating in or authorizing a pattern of criminal activity and deriving proceeds from that activity is an "enterprise" within the meaning of the Racketeer Influenced and Corrupt Organizations (RICO) Act, Minn. Stat. §§ 609.901–.912 (2018).

2. An enterprise under the RICO Act can exist within a corporation that is otherwise conducting lawful activities and is unaware of the criminal activity of a group of persons in the corporation.

OPINION

CONNOLLY, Judge

Appellant State of Minnesota charged respondent Dustin Paulson with racketeering in violation of Minn. Stat. 609.903, subd. 1(1), and with aiding and abetting theft by swindle in violation of Minn. Stat. § 609.52, subd. 2(a)(4) (2018). Respondent moved to dismiss the charges for lack of probable cause. The district court denied the motion to dismiss the theft-by-swindle charge but granted the motion to dismiss the racketeering charge, concluding that there was no enterprise within the meaning of the racketeering statute. Appellant challenges the dismissal of the racketeering charge. Because the district court erred in concluding that there was no enterprise within the meaning of the RICO Act, we reverse the dismissal and remand for further proceedings.

FACTS

Respondent worked as a district manager for Outsourced Sales Leadership (OSL), a corporation that sold cell phones in retail chain stores. OSL employees, known as "mobile experts," were supervised by a team lead, and team leads reported to the district manager. Respondent's district had about 15 stores. Charges were filed against seven OSL employees, including respondent, and against several "credit mules" who had acted as purchasers in fraudulent transactions at the stores.

The probable-cause statement in the complaint explained that credit mules either brought another person to a store or used another person's identification information to pass the store's credit check and purchase expensive phones on an installment plan. The purchasers made only the first payment, received the phones, and resold them at or near their retail value, making a significant profit. The sales representatives, team leaders, and respondent all benefitted financially from the resulting fraudulent sales. There is no evidence that others in the corporation participated in this criminal activity.

The complaint states that respondent's text messages indicate that he was aware of the "credit mules" and advised his sales team to use them to make sales. It states further that, when interviewed by law enforcement, respondent admitted that his team leads were sending him pictures of fraudulent transactions, that he could have informed the stores' asset protection that fraud was occurring but did not do so, that he did nothing to stop the suspiciously high numbers of sales, and that he benefitted from the high sales with a performance bonus.

Two former team leads who had reported to respondent, M.Q. and L.C., testified at respondent's contested probable-cause hearing. M.Q. testified that: (1) he became aware of a significant increase in the sales of sales representative C.T.; (2) he investigated and discovered C.T.'s multiple sales of high-end phones to the same person, which caused M.Q. to think of credit mules; (3) M.Q. told respondent that C.T.'s multiple sales of high-end phones to the same person, possibly a credit mule, were atypical because the store's customers generally wanted inexpensive phones; (4) respondent told M.Q. that OSL could not know if sales involved a credit mule and that OSL employees were to proceed with a

sale to anyone who passed the store's credit check; (5) respondent's reaction surprised M.Q., whose former employers in the cell-phone industry refused to sell phones to credit mules and tried to stop fraudulent sales; (6) M.Q. noticed that sales representative S.J. had the same history of increased sales and multiple sales of high-end phones to the same person; (7) M.Q. discovered that one customer had purchased five phones on the same day, while another customer switched carriers when a carrier would not approve further purchases; (8) M.Q. told respondent about C.T.'s and S.J.'s activity because it was a red flag of credit-mule activity; (9) respondent himself had access to this information; (10) respondent told M.Q. to proceed with the sales even if he thought credit mules were involved; (11) respondent did not tell M.Q. that sales representatives or team leads could decline sales they believed to be fraudulent; (12) M.Q. believed respondent approved of the very high sales numbers achieved by the fraudulent sales of C.T. and S.J. because respondent repeatedly praised them in public and encouraged other sales representatives to reach those numbers; and (13) M.Q. believed that respondent was a catalyst for and facilitated fraudulent sales, in part because respondent never alerted either the store or his OSL superiors to the fraudulent sales.

L.C. testified that: (1) he became a team lead in August 2018; (2) when L.C. recognized an individual who kept buying phones, he typed in 111111111 for the individual's social security number, so that the transaction would be declined; (3) when L.C. reported what he had done to respondent, respondent told L.C. that he did not have the right to do that to customers or to decline sales; (4) when L.C. again told respondent about his concerns, respondent said that it was not L.C.'s responsibility to determine

whether a customer was a credit mule and that respondent would replace L.C. if he continued to decline sales; and (5) when L.C. expressed his concern about credit mules at team lead meetings, respondent said all customers were to be treated as guests in the stores and neither team leads nor sales representatives could decline a transaction even if there were clear indications of credit-mule activity.

Following the hearing, the district court determined that respondent could not be charged with racketeering and dismissed that charge because, to be guilty of racketeering, a person must be "employed by or associated with an enterprise and intentionally conduct[] or participate[] in the affairs of the enterprise by participating in a pattern of criminal activity" under Minn. Stat. § 609.903, subd. 1, and there was no enterprise here. The state challenges the dismissal.

ISSUE

Did the district court err in dismissing the racketeering charge on the ground that no enterprise was involved?

ANALYSIS

As a threshold matter, we address two relevant provisions of Minn. R. Crim P. 28.04. First, Minn. R. Crim. P. 28.04, subd. 2(2)(b), provides that, when appealing a pretrial order, a prosecutor must file a statement of the case "explaining how the district court's alleged error, unless reversed, will have a critical impact on the outcome of the trial." *See State v. Trei*, 624 N.W.2d 595, 597 (Minn. App. 2001) ("When the state appeals a pretrial order under Minn. R. Crim. P. 28.04, a reviewing court will reverse only if the state demonstrates clearly and unequivocally that the district court erred in its judgment

and, unless reversed, the error will have a critical impact on the outcome of the trial.") *rev. dismissed* (Minn. June 22, 2001). Dismissal of a complaint satisfies the critical-impact requirement. *Trei,* 624 N.W.2d at 597. The state has shown a critical impact here because the complaint charged two entirely separate crimes: (1) racketeering, and (2) aiding and abetting theft by swindle. Thus, dismissing the racketeering count leaves respondent able to be tried only on the theft-by-swindle count; it has a critical impact on the trial.

Second, Minn. R. Crim. P. 28.04, subd. 1(1), provides that a prosecutor may appeal from probable cause dismissal orders only if they are "based on questions of law," not if they are "premised solely on a factual determination." *See State v. Linville*, 598 N.W.2d 1, 2 (Minn. App. 1999) ("A dismissal for lack of probable cause is appealable . . . if it is based on a legal determination, such as the interpretation of a statute." (quotation omitted)). The issue here involves the construction of a statute.

This court's review of a district court's dismissal of a complaint based on the construction of a statute is de novo. *State v. Hanson*, 583 N.W.2d 4, 6 (Minn. App. 1998), *rev. denied* (Minn. Oct. 29, 1998). The statutes in the RICO Act "shall be liberally construed to achieve their remedial purposes of curtailing racketeering activity and controlled substances and lessening their economic and political power in Minnesota." Minn. Stat. § 609.901.

A person is guilty of racketeering if the person

> (1) is employed by or associated with an enterprise and intentionally conducts or participates in the affairs of the enterprise by participating in a pattern of criminal activity;

> (2) acquires or maintains an interest in or control of an enterprise, or an interest in real property, by participating in a pattern of criminal activity; or
>
> (3) participates in a pattern of criminal activity, and knowingly invests any proceeds derived from that conduct, or any proceeds derived from the investment or use of those proceeds, in an enterprise or in real property.

Minn. Stat. § 609.903, subd. 1. An "enterprise" is defined as: "a sole proprietorship, partnership, corporation, trust, or other legal entity, or a union, governmental entity, association, or group of persons, associated in fact although not a legal entity, and includes illicit as well as legitimate enterprises." Minn. Stat. § 609.902, subd. 3. A RICO enterprise is also characterized by:

> (1) a common purpose among the individuals associated with the enterprise; where
> (2) the organization is ongoing and continuing, with its members functioning under some sort of decisionmaking arrangement or structure; and where
> (3) the activities of the organization extend beyond the commission of the underlying criminal acts either to coordinate the underlying criminal acts into a pattern of criminal activity or to engage in other activities.

State v. Huynh, 519 N.W.2d 191, 196 (Minn. 1994) (footnote omitted).

The group of individuals charged in connection with fraudulent sales between January and April of 2019 included seven OSL employees—four sales representatives, two team leaders, and respondent, the district manager—as well as some other individuals, the credit mules. These people had a common purpose: making money from the fraudulent sales, either by being rewarded for high numbers of sales or by selling the phones they fraudulently purchased. Their organization extended from the mules, who presented false information and identifications to the sales representatives, to the team leads, who were

responsible for the sales, to respondent, who encouraged team leads and sales representatives to achieve high numbers of sales by making use of the credit mules' sales and told them they were not allowed to decline sales they suspected were being made to credit mules. The activities of those who were OSL employees extended beyond making money from the fraudulent sales to fulfilling their job responsibilities as OSL employees.

Thus, the *Huynh* criteria for an "enterprise" would be met by the group that perpetrated or enabled the fraudulent sales and were charged in connection with them. *See id.; see also* Minn. Stat. § 609.902, subd. 3 (including a "group of persons, associated in fact although not a legal entity" in the definition of "enterprise").

OSL, as a lawful corporate entity, was never charged with or accused of racketeering; nor were most OSL employees charged. However, the district court concluded that, because "[t]he state fail[ed] to provide evidence that OSL existed for the purpose of perpetuating theft on an ongoing basis," and because OSL was "not a 'front' or 'cover' for criminal activity," there was no "enterprise" within the meaning of the RICO Act; the state lacked probable cause to charge respondent with racketeering; and the district court dismissed the racketeering charge. We disagree. In order for respondent to be charged with racketeering, there was no requirement that OSL, which employed him and six of the others charged, be engaged in, involved with, or even aware of, their criminal activity.

The racketeering charge was dismissed from the complaint on the ground of lack of probable cause. "[P]robable cause requires only a probability or substantial chance of criminal activity, not an actual showing of such activity." *State v. Harris*, 589 N.W.2d

782, 790-91 (Minn. 1999) (quotation omitted). There was probable cause, i.e., a probability or substantial chance of respondent's criminal activity, to charge him with racketeering: he had authority over those whom he encouraged or enabled to engage in criminal activity, which consisted of the illegal sale of phones. The district court erred in dismissing the racketeering charge.

DECISION

Because the district court erred in concluding that, if the employer of those charged with criminal activity was not shown to be an enterprise within the meaning of the RICO Act, the charge of racketeering had to be dismissed, we reverse the dismissal and remand for further proceedings.

Reversed and remanded.